

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Don L. McKinney,

5 Plaintiff,

6 v.

7 Argenis Valentin-Reyes, et al.,

8 Defendants.
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Case No. 2:22-cv-1644-APG-BNW

ORDER

10 This Court previously screened Plaintiff's complaint. ECF No. 4. The Court explained that
11 Plaintiff needed to establish complete diversity between Defendants and him. *Id.* Specifically, the
12 Court explained that his complaint did not indicate whether Nidia Bolanos was a citizen of Utah.
13 *Id.* As a result, the Court advised Plaintiff he would need to file an amended complaint indicating
14 whether Bolanos was a citizen of Utah. *Id.*

15 Plaintiff filed an amended complaint indicating that Bolanos is a citizen of Utah. ECF No.
16 5. As a result, it is now clear the Court has diversity jurisdiction in this action. Nevertheless,
17 because the amended complaint does not include any facts as to the dispute between Plaintiff and
18 Defendants, the Court will dismiss the amended complaint with leave to amend.

19 **I. ANALYSIS**

20 **A. Screening standard**

21 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
22 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable
23 claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may
24 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
25 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
26 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*,
27 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain
28 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."

1 *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints
2 and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts
3 in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908
4 (9th Cir. 2014) (*quoting Iqbal*, 556 U.S. at 678).

5 In considering whether the complaint is sufficient to state a claim, all allegations of
6 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
7 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
8 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
9 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
10 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
11 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
12 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
13 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 **B. Screening the complaint**

15 Here, Plaintiff does not include any facts. As a result, the Court finds Plaintiff has not
16 stated a claim against any defendants mentioned in the complaint. Without any factual
17 allegations regarding the underlying dispute and the various entities’ roles in the case, the Court
18 cannot evaluate whether Plaintiff states a claim against Defendants. As a result, the Court will
19 dismiss the complaint without prejudice and with leave for Plaintiff to file a second amended
20 complaint.

21 If Plaintiff chooses to file a second amended complaint, the document must be titled
22 “Second Amended Complaint.” The amended complaint must again recite the information
23 needed to demonstrate the Court has diversity jurisdiction over this case (that is, explain Plaintiff
24 is a citizen of Nevada and that each defendant is a citizen of Utah and the amount in controversy).
25 Additionally, the amended complaint must contain a short and plain statement describing the
26 underlying case and each defendant’s involvement in the case. *See Fed. R. Civ. P. 8(a)(2)*.
27 Although the Federal Rules of Civil Procedure adopt a flexible pleading standard, Plaintiff still
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1 must give each defendant fair notice of his claims against them and why Plaintiff believes he is
2 entitled to relief.


3 Additionally, Plaintiff is advised that if he files an amended complaint, the original
4 complaint (ECF No. 1-1) and the Amended Complaint (ECF No. 5) no longer serve any function
5 in this case. As such, the second amended complaint must be complete in and of itself without
6 reference to prior pleadings or other documents. The Court cannot refer to a prior pleading or
7 other documents to make Plaintiff's second amended complaint complete.

8 **II. CONCLUSION**

9 IT IS THEREFORE ORDERED that Plaintiff's complaint (ECF No. 5) is dismissed
10 without prejudice.

11 IT IS FURTHER ORDERED that Plaintiff will have until December 14, 2022 to file a
12 second amended complaint. Failure to comply with this order will result in a recommendation
13 that this case be dismissed.

14 DATED: November 15, 2022

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17 BREND A WEKSLER
18 UNITED STATES MAGISTRATE JUDGE
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